

REMARKS

Rejected claims 93, 99, 110, 112 and 124 have been canceled without prejudice.

Claims 84, 95, 103 and 125 have been rejected under 35 U.S.C. § 102(a) as being anticipated by Knight et al '479. This rejection is respectfully traversed with respect to these claims as amended herein.

These claims have been amended in consideration of the Examiner's comments to define the invention with greater particularity and now all variously recite "a transparent distal tip having substantially conical tapered outer walls converging with conical symmetry about the central axis to a blunt end for dissecting tissue, the tip being disposed on a distal end of the unit to dissect tissue and facilitate passage of the tubular body through tissue under visualization through the tip by the endoscopic imaging element", and "a non-inflatable dilating element disposed proximally of the distal tip and having a substantially olive-shaped exterior contour that is disposed with rotational symmetry about the central axis and that gradually increases in cross-sectional dimension symmetrically about the central axis in the proximal direction from a distal edge thereof to a maximum cross-sectional dimension greater than the cross-sectional dimension of the distal end of the tubular body, the dilating element then decreasing in cross-sectional dimension symmetrically about the central axis in the proximal direction to a

proximal edge for facilitatingatraumatic expansion of tissue following dissection by the tapered distal tip during advance of the tissue dissector through tissue”.

In addition, the dependent claims are now further variously limited by such recitations as “the dilating element is flexible in cross-sectional dimension”, or “the distal tip and dilating element are formed as a single unit removably mounted on the tubular body substantially symmetrically about the central axis”, or “a spacer length is disposed intermediate the tip and the dilating element, the spacer length having an outer dimension less than the maximum cross-sectional dimension of the dilating element and positioning the dilating element within an angle of the symmetrically conical tapered outer walls of the tip to inhibit the dilating element from impeding contact of the outer walls of the tip with a target vessel”.

These aspects of the claimed invention now more concisely define the tissue dissector unambiguously as having symmetry about the central axis to promote surgical operation of the tissue dissector in any angular orientation about the central axis of the tubular body. These aspects of the claimed invention are not disclosed or even suggested by Knight et al '479 which relies upon only one angular orientation about the tubular axis (with perhaps narrow limits of angular variation) attributable to the upstanding handle 24 and the flat planar underside of the concave head 26. And, contrary to the Examiner's analyses of this reference, there can now not be fairly found any of Applicants' claimed “conical tapered

outer walls converging with conical symmetry about the central axis” in this cited reference. At best, the concave head 26 has a flat planar underside that precludes any axial symmetry and restricts its surgical operation (via upstanding handle 24) to limited angular orientation about the tubular axis. It is therefore respectfully submitted that amended claims 84, 95, 103 and 125 are now not anticipated by, but instead are patentably distinguishable over the cited art.

Claim 123 has been rejected under 35 U.S.C. § 103(a) as being unpatentable over Knight et al '479 in view of Yoon '286. This rejection is respectfully traversed.

This dependent claim specifically recites “a non-inflatable dilating element disposed proximally of the distal tip and having a substantially olive-shaped exterior contour that is disposed with rotational symmetry about the central axis and that gradually increases in cross-sectional dimension symmetrically about the central axis in the proximal direction from a distal edge thereof to a maximum cross-sectional dimension greater than the cross-sectional dimension of the distal end of the tubular body, the dilating element then decreasing in cross-sectional dimension symmetrically about the central axis in the proximal direction to a proximal edge for facilitating atraumatic expansion of tissue following dissection by the tapered distal tip during advance of the tissue dissector through tissue”, and

“the dilating element is flexible in cross-sectional dimension”, and “the dilating element is resiliently compressible in cross-sectional dimension”.

These aspects of the claimed invention are not disclosed or even fairly suggested by these references considered either alone or in the combination proposed by the Examiner. Specifically, neither Knight et al '479 nor Yoon '286 disclose any dilator device axially aligned along the body proximally of the tip. The deficiency of disclosure of any such feature in Knight et al '479 is discussed in the above Remarks, and Yoon '286 merely discloses various tip configurations for penetrating tissue with associated safety shields 34 overlaying the penetrating tip. Thus, merely combining these references, if even possible to accomplish without impermissibly altering operations or functions of these references, would nevertheless only establish a tissue-penetrating tip of some configuration, perhaps having a flat undersurface and shrouded by a safety shield. Such combination of features from the cited art is, for example, devoid of an axially-aligned dilator located proximally of the tip in a structure as claimed by Applicants, and nevertheless fails to establish even a *prima facie* basis, including *all* recited elements, from which a proper determination of obviousness may be formed. It is therefore respectfully submitted that claim 123 is patentably distinguishable over the cited art.

The Examiner's Responses to arguments are noted, and the claims have been amended herein in consideration of the Examiner's remarks to more distinctly define the invention over the cited art.

Favorable reconsideration is solicited.

Entry of this amendment, which is submitted to condition this application for allowance, is requested. In the event a claim rejection is continued, it is requested that this amendment be entered in order to simplify and clarify the issues for appeal.

Respectfully submitted,
Michael C. Stewart, et al.

Dated: 7/9/08

By: /Albert C. Smith/
Albert C. Smith, Reg. No.: 20,355
Fenwick & West LLP
Silicon Valley Center
801 California Street
Mountain View, CA 94041
Tel.: (650) 335-7296
Fax: (650) 938-5200